

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA

v.

Case No. 2:15cr165

RAYMOND ANTOINE WYCHE

**DEFENDANT RAYMOND ANTOINE WYCHE'S RESPONSE TO MOTION OF THE UNITED STATES
TO DEPART UPWARD FROM CRIMINAL HISTORY IV TO V**

COMES NOW the defendant, Raymond Antoine Wyche, by counsel, and as and for his Response To Motion Of The United States To Depart Upward From Criminal History IV to V, respectfully states the following:

The Government moves the Court for an upward departure in the defendant's Criminal History Category from IV to V. The defendant respectfully objects to this motion.

In large measure, the Government's motion is based upon the use of alleged factual information in connection with multiple charges of which the defendant has been outright acquitted or which charges have been dismissed or *nolle prossed*.

Utilizing the United States Sentencing Guidelines' Criminal History calculation rules, the defendant's record of convictions results in a Criminal History Category IV. The defendant respectfully submits that the Court should adhere to these well-established calculations rules, lest a precedent be set that acquitted or otherwise dismissed charges can still be used to enhance a defendant's criminal history.

While the Guidelines do provide for departures upward under certain circumstances where the defendant's criminal history and future dangerousness may be understated by their criminal history points, there is nothing in the Guidelines, nor does the Government point to anything in the Guidelines, which supports or encourages the theory that acquitted

or otherwise dismissed charges can be used in effect to add points that would otherwise not be awarded in calculating a criminal history.

To allow the Government essentially to go behind acquitted and dismissed charges and substitute their own conclusions for those of the formal criminal justice system creates the potential to use speculation, arbitrary considerations, guess work, suspicion and other unreliable determinations in order to penalize a defendant for charges of which he was never convicted.

While there may be appropriate cases where the defendant's actual criminal conduct proven in the Courts and for which he has been awarded points might still justify an upward departure because of the nature and circumstances of the conduct for which he was convicted, the defendant respectfully submits that in the instant case, relying upon acquitted and otherwise dismissed charges is simply insufficient to fairly enhance the defendant's criminal history.

CONCLUSION

For the foregoing reasons, the defendant respectfully objects to the Government's motion for upward departure.

RAYMOND ANTIONE WYCHE

/s/

Andrew M. Sacks, Esquire

Andrew M. Sacks, Esquire, VSB#: 20082
Stanley E. Sacks, Esquire, VSB# 04305
Attorneys for defendant Kenneth R. Meeks
SACKS & SACKS, P.C.
Town Point Center
150 Boush Street, Suite 801
Norfolk, VA 23510
Telephone: (757) 623-2753
Facsimile: (757) 274-0148
E-mail: andrewsacks@lawfirmofsacksandsacks.com

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2017, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to:

William D. Muhr Esquire and
VSB # 30652
Assistant United States Attorney
United States Attorney's Office
8000 World Trade Center
101 West Main Street
Norfolk, VA 23510
Phone: (757) 441-6331
Facsimile: (757) 441-6689
Email: bill.muhrl@usdoj.gov

V. Kathleen Dougherty, Esquire
VSB # 77294
Assistant United States Attorney
United States Attorney's Office
8000 World Trade Center
101 West Main Street
Norfolk, VA 23510
Phone: (757) 441-6331
Facsimile: (757) 441-6689
E-mail: v.kathleen.dougherty@usdoj.gov

/s/

Andrew M. Sacks, Esquire

Andrew M. Sacks, Esquire, VSB#: 20082
Stanley E. Sacks, Esquire, VSB# 04305
Attorneys for defendant Raymond Antoine Wyche
SACKS & SACKS, P.C.
Town Point Center
150 Boush Street, Suite 501
Norfolk, VA 23510
Telephone: (757) 623-2753
Facsimile: (757) 274-0148
E-mail: andrewsacks@lawfirmofsacksandsacks.com

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